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NO. 35383-1-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ABBEY ROAD GROUP, LLC, a Washington limited liability company;
KARL J. THUN and VIRGINIA S. THUN, husband and wife; THOMAS
PAVOLKA; VIRGINIA LESLIE REVOCABLE TRUST; and WILLIAM
AND LOUISE LESLIE FAMILY REVOCABLE TRUST,

Petitioners,

v.

CITY OF BONNEY LAKE, a Washington municipal corporation,

Respondent.

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STATE OF WASHINGTON
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RESPONSE TO PETITIONERS' SUPPLEMENTAL BRIEF

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I. INTRODUCTION

In their supplemental brief, Petitioners urge this Court to make a broad ruling on the vested rights doctrine and judicially extend that doctrine to apply to all land use permits. As discussed below, this Court has already declined to expand the vested rights doctrine, stating that any changes to that doctrine should come from the Legislature and not the courts. There is no reason for this Court to change its position in that regard and therefore the City requests that the Court limit any opinion to the specific matter before the Court—whether, under existing case law from this Court, the City correctly determined that Abbey Road’s site plan review application did not vest development rights. For the reasons argued in the City’s previous briefing, this Court should affirm the decision of the Court of Appeals and dismiss Abbey Road’s appeal.

II. ARGUMENT

- A. Under the doctrine of *stare decisis* and the principles of judicial restraint, this Court should not address the broad issue of the vested rights doctrine as it is unnecessary for disposition of the issue before the Court.

The doctrine of *stare decisis* assures that the same rules will be applied to each case and the parties may rely upon those decisions made by this Court. “*Stare decisis* furthers unity in the system of justice, assuring that decisions by courts of last resort are reliably binding.” *Davis v. Baugh Indus.*

Contractors, Inc., 159 Wn.2d 413, 150 P.3d 545, 550 (2007). “*Stare decisis* also serves the separation of powers, as the legislature may, in an appropriate area, change the law. If the legislature does not change the law, this further supports . . . reliance on the rule.” Here, this Court has already addressed the precise issue presented in this case in *Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994). In *Erickson* the developers argued, like Petitioners do here, that due process requires that vesting occur at the initiation of site plan review. This Court expressly rejected that argument, holding that vesting at the filing of a building permit application is sufficient to satisfy due process. That decision was handed down in 1994 and the Legislature has not acted to change the law in response to the decision. As such, the doctrine of *stare decisis* applies and this Court should not revisit the issue.

Moreover, as a general matter, this Court will not decide issues beyond those specifically required to dispose of the case. “Principles of judicial restraint dictate that if resolution of an issue effectively disposes of a case, we should resolve the case on that basis without reaching any other issues that might be presented.” *Washington State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 307, 174 P.3d 1142 (2007) (quoting *Hayden v. Mut. Of Enumclaw Ins. Co.*, 141 Wn.2d 55, 68, 1 P.3d 1167 (2000)).

Resolving the issue of whether the City properly determined that Abbey Road's site plan review application did not vest development rights is sufficient to dispose of this case, and therefore, under the doctrine of judicial restraint, this Court should not entertain Abbey Road's arguments that the vested rights doctrine should be broadly extended.

B. This Court has already determined that the vested rights doctrine does not extend to site plan review and there is no reason for the Court to depart from its well-established precedent.

This Court has consistently stated that it will not judicially extend the vested rights doctrine to include site plan review and there has been no change in land use law that requires this Court to change that long-standing position. In 1987, this Court stated: "as a general principle, we reject any attempt to extend the vested rights doctrine to site plan review." *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 639, 733 P.2d 182 (1987).

Moreover, after *Valley View*, this Court squarely addressed the precise issue presented in this case—whether an application for site plan review vests development rights. In *Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994), a developer challenged the City of Seattle's vesting ordinance which set vesting when either a building permit

application is filed or when a Master Use Permit (MUP) is issued.¹ The developer argued, like Abbey Road does here, that due process requires vesting to occur when a site plan review application is filed. This Court fully considered the developer's arguments and rejected them, refusing to expand the vested rights doctrine to the filing of site plan review applications. That decision was handed down in 1994 and since then cities such as the City of Bonney Lake have relied upon that decision in processing land use applications and apply the long-standing vested rights doctrine to those applications.

Petitioners' main argument in support of their contention that the vested rights doctrine should be expanded is that, "Since 1987, the land development process has continued to expand and become more complex." Supplemental Brief at 3. This is exactly the same argument that the developer made to this Court in *Erickson*. This Court considered this precise argument and explicitly rejected it. Recognizing that "Washington has undergone a sea of change with respect to land use regulation," *Erickson*, 123 Wn.2d at 876, the Court concluded that any changes to the current vested rights doctrine should be left to the *Legislature* and not to the courts: "Given the substantial legislative activity in land use law, we are unwilling to

¹ Under this scheme a MUP is the end result of the site plan review process.

modify or expand the vested rights doctrine unless it is required to protect the constitutional issues at stake.” *Erickson*, 123 Wn.2d at 876. Nothing has changed in respect to land use law since this Court’s decision that warrants a change in position on this issue. As this Court has already considered the issue in this case and the Legislature has not acted to change the vested rights doctrine, this Court should decline Abbey Road’s invitation to revisit the issue and make sweeping changes to land use law.

III. CONCLUSION

This Court has expressly rejected requests to extend the vested rights doctrine to site plan review and there is no reason for this Court to change its position. The doctrine of *stare decisis* applies and this Court should not revisit the vested rights doctrine because it has previously addressed the same issue. Moreover, principles of judicial restraint compel this Court to address only those issues required to decide this case and not to issue sweeping opinions about land use law in general. As such, the City requests that the Court affirm the Court of Appeals’ decision in this case and dismiss Petitioners’ appeal.

RESPECTFULLY SUBMITTED this 16th day of October, 2008.

DIONNE & RORICK

A handwritten signature in black ink, appearing to read "J. Ganson", written over a horizontal line.

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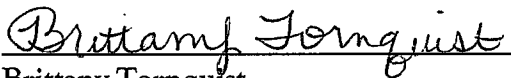
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington
that I sent via U.S. first class mail, postage prepaid, Response to Petitioners'
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Dated this 16th day of October 2008.


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